

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
NORTHWEST HARDWOODS, INC., )  
Appellant, )  
v. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

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PCHB No. 1037

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

PER W. A. GISSBERG:

A formal hearing on the appeal to respondent's \$250.00 civil penalty for an alleged particulate emission violation came on before W. A. Gissberg (presiding), and Chris Smith on August 27, 1976 at Everett, Washington. Appellant appeared by and through its attorney, David Duskin of Bailey and Duskin; respondent by Keith D. McGoffin of Rovai, McGoffin, Turner and Mason.

Having heard the testimony and considered the exhibits and being fully advised, the Board makes and enters the following

FINDINGS OF FACT

I

Respondent, pursuant to RCW 43.21B.260, has filed with this Board a certified copy of its Regulation I containing respondent's regulations and amendments thereto.

II

Appellant admitted that on April 7, 1976, particulate emissions from the boiler stack of its Arlington sawmill were in violation of the weight rate standards of Section 9.09(b)(4) of respondent's Regulation I. On three earlier occasions, December 19, 1974, and on December 29 and December 31, 1975, appellant's stack was causing violations of the visual emission standards established by respondent in Section 9.03 of its Regulation I. On two of the earlier occasions, respondent had imposed civil penalties which were paid by appellant.

III

Section 9.09 of respondent's Regulation I makes it unlawful to cause emissions of particulate matter in wood residue fuel burning equipment when in excess of the weight of 0.10 grains for each standard cubic foot of exhaust gas. Section 9.03 of the Regulation makes it unlawful to cause emissions of particulate which violate certain visual standards. It is possible for any given source of emissions to be in compliance with visual standards but, be in violation of the weight rate standards.

IV

Respondent has instituted a testing program to determine whether particulate sources do or do not violate the weight rate

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1 standard. An actual test or measurement of the particulate is the  
2 only method of determining whether a particulate source does or does  
3 not violate the weight rate standard.

4 V

5 As a result of the past visual standard violations of appellant's  
6 boiler stack, respondent requested a source test, in which appellant  
7 fully cooperated, and conducted the same on April 7, 1976. The test  
8 revealed a violation and prompted the immediate issuance of a formal  
9 Notice of Violation, followed by the imposition of a civil penalty,  
10 from which this appeal was taken.

11 VI

12 Upon receiving the Puget Sound Air Pollution Control Agency (PSAPCA)  
13 source test, appellant has promptly undertaken steps to obtain  
14 further testing data through its own consultant in order that the  
15 emission problem can be solved. In the meantime, appellant has  
16 applied for a one year variance from Section 9.09(b)(4) and its  
17 consultant estimates that capital expenditures for potential solutions  
18 of the problem range as high as 25 to 30 thousand dollars.

19 VII

20 Any Conclusion of Law hereinafter stated which may be deemed  
21 a Finding of Fact is hereby adopted as such.

22 From these Findings the Pollution Control Hearings Board comes  
23 to these

24 CONCLUSIONS OF LAW

25 I

26 Appellant, although it violated respondent's Regulation I, was a

27 FINAL FINDINGS OF FACT,  
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1 willing and cooperative participant in the PSAPCA source testing from  
2 which the violation was discovered. Additionally, appellant has  
3 undertaken a course of action reasonably designed to bring it  
4 into compliance at a substantial expenditure of its funds. Accordingly,  
5 we believe that the penalty should be suspended upon condition that  
6 appellant bring itself into compliance on or before July 29, 1977,  
7 one year from the date of its variance application.

8 II

9 Any Finding of Fact which should be deemed a Conclusion of  
10 Law is hereby adopted as such.

11 Therefore, the Pollution Control Hearings Board issues this

12 ORDER

13 The Notice of Violation is affirmed, but the Notice of Civil  
14 Penalty is suspended upon the condition that appellant bring itself  
15 into compliance with Section 9.09(b)(4) of Regulation I on or before  
16 July 29, 1977.

17 DATED this 16<sup>th</sup> day of September, 1976.

18 POLLUTION CONTROL HEARINGS BOARD

19 W. A. Gissberg  
20 W. A. GISSBERG, Presiding

21 Chris Smith  
22 CHRIS SMITH, Member

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24  
25  
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27 FINAL FINDINGS OF FACT,  
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